

ASSEMBLY BILL

No. 958

Introduced by Assembly Member Bill Berryhill

February 18, 2011

An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 110.5 is added to the Business and
- 2 Professions Code, to read:
- 3 110.5. (a) Notwithstanding any other provision of law and
- 4 except as provided in subdivisions (b) and (c), any accusation filed

1 against a licensee of a board described in Section 101, pursuant to
2 Section 11503 of the Government Code, shall be filed within one
3 year after the board discovers the act or omission alleged as the
4 ground for disciplinary action, or within four years after the act or
5 omission alleged as the ground for disciplinary action occurs,
6 whichever occurs first.

7 (b) If an alleged act or omission involves a minor, the four-year
8 limitations period provided for by subdivision (a) shall be tolled
9 until the minor reaches the age of majority.

10 (c) If a licensee intentionally conceals evidence of wrongdoing,
11 the four-year limitations period provided for by subdivision (a)
12 shall be tolled during that period of concealment.

13 SEC. 2. Section 1670.2 of the Business and Professions Code
14 is repealed.

15 ~~1670.2. (a) Except as otherwise provided in this section, any~~
16 ~~proceeding initiated by the board against a licensee for the violation~~
17 ~~of any provision of this chapter shall be filed within three years~~
18 ~~after the board discovers the act or omission alleged as the ground~~
19 ~~for disciplinary action, or within seven years after the act or~~
20 ~~omission alleged as the ground for disciplinary action occurs,~~
21 ~~whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~
23 ~~11503 of the Government Code alleging fraud or willful~~
24 ~~misrepresentation is not subject to the limitation in subdivision~~
25 ~~(a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging unprofessional conduct~~
28 ~~based on incompetence, gross negligence, or repeated negligent~~
29 ~~acts of the licensee is not subject to the limitation in subdivision~~
30 ~~(a) upon proof that the licensee intentionally concealed from~~
31 ~~discovery his or her incompetence, gross negligence, or repeated~~
32 ~~negligent acts.~~

33 ~~(d) If an alleged act or omission involves any conduct described~~
34 ~~in subdivision (c) of Section 1680 committed on a minor, the~~
35 ~~seven-year limitations period in subdivision (a) and the 10-year~~
36 ~~limitations period in subdivision (c) shall be tolled until the minor~~
37 ~~reaches the age of majority.~~

38 ~~(e) An accusation filed against a licensee pursuant to Section~~
39 ~~11503 of the Government Code alleging conduct described in~~
40 ~~subdivision (c) of Section 1680 not committed on a minor shall~~

1 ~~be filed within three years after the board discovers the act or~~
2 ~~omission alleged as the ground for disciplinary action, or within~~
3 ~~10 years after the act or omission alleged as the ground for~~
4 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
5 ~~shall apply to a complaint alleging conduct received by the board~~
6 ~~on and after January 1, 2005.~~

7 ~~(f) In any allegation, accusation, or proceeding described in~~
8 ~~this section, the limitations period in subdivision (a) shall be tolled~~
9 ~~for the period during which material evidence necessary for~~
10 ~~prosecuting or determining whether a disciplinary action would~~
11 ~~be appropriate is unavailable to the board due to an ongoing~~
12 ~~criminal investigation.~~

13 SEC. 3. Section 2230.5 of the Business and Professions Code
14 is repealed.

15 ~~2230.5. (a) Except as provided in subdivisions (b), (c), and~~
16 ~~(e), any accusation filed against a licensee pursuant to Section~~
17 ~~11503 of the Government Code shall be filed within three years~~
18 ~~after the board, or a division thereof, discovers the act or omission~~
19 ~~alleged as the ground for disciplinary action, or within seven years~~
20 ~~after the act or omission alleged as the ground for disciplinary~~
21 ~~action occurs, whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~
23 ~~11503 of the Government Code alleging the procurement of a~~
24 ~~license by fraud or misrepresentation is not subject to the limitation~~
25 ~~provided for by subdivision (a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging unprofessional conduct~~
28 ~~based on incompetence, gross negligence, or repeated negligent~~
29 ~~acts of the licensee is not subject to the limitation provided for by~~
30 ~~subdivision (a) upon proof that the licensee intentionally concealed~~
31 ~~from discovery his or her incompetence, gross negligence, or~~
32 ~~repeated negligent acts.~~

33 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
34 ~~limitations period provided for by subdivision (a) and the 10-year~~
35 ~~limitations period provided for by subdivision (c) shall be tolled~~
36 ~~until the minor reaches the age of majority.~~

37 ~~(e) An accusation filed against a licensee pursuant to Section~~
38 ~~11503 of the Government Code alleging sexual misconduct shall~~
39 ~~be filed within three years after the board, or a division thereof,~~
40 ~~discovers the act or omission alleged as the ground for disciplinary~~

1 action, or within 10 years after the act or omission alleged as the
2 ground for disciplinary action occurs, whichever occurs first. This
3 subdivision shall apply to a complaint alleging sexual misconduct
4 received by the board on and after January 1, 2002.

5 (f) ~~The limitations period provided by subdivision (a) shall be~~
6 ~~tolled during any period if material evidence necessary for~~
7 ~~prosecuting or determining whether a disciplinary action would~~
8 ~~be appropriate is unavailable to the board due to an ongoing~~
9 ~~criminal investigation.~~

10 SEC. 4. Section 2960.05 of the Business and Professions Code
11 is repealed.

12 ~~2960.05.—(a) Except as provided in subdivisions (b), (c), and~~
13 ~~(e), any accusation filed against a licensee pursuant to Section~~
14 ~~11503 of the Government Code shall be filed within three years~~
15 ~~from the date the board discovers the alleged act or omission that~~
16 ~~is the basis for disciplinary action, or within seven years from the~~
17 ~~date the alleged act or omission that is the basis for disciplinary~~
18 ~~action occurred, whichever occurs first.~~

19 ~~(b) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging the procurement of a~~
21 ~~license by fraud or misrepresentation is not subject to the~~
22 ~~limitations set forth in subdivision (a).~~

23 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~
24 ~~for the length of time required to obtain compliance when a report~~
25 ~~required to be filed by the licensee or registrant with the board~~
26 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~
27 ~~1 is not filed in a timely fashion.~~

28 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
29 ~~limitations period provided for by subdivision (a) and the 10-year~~
30 ~~limitations period provided for by subdivision (c) shall be tolled~~
31 ~~until the minor reaches the age of majority.~~

32 ~~(e) An accusation filed against a licensee pursuant to Section~~
33 ~~11503 of the Government Code alleging sexual misconduct shall~~
34 ~~be filed within three years after the board discovers the act or~~
35 ~~omission alleged as the ground for disciplinary action, or within~~
36 ~~10 years after the act or omission alleged as the ground for~~
37 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
38 ~~shall apply to a complaint alleging sexual misconduct received by~~
39 ~~the board on and after January 1, 2002.~~

1 ~~(f) The limitations period provided by subdivision (a) shall be~~
2 ~~tolled during any period if material evidence necessary for~~
3 ~~prosecuting or determining whether a disciplinary action would~~
4 ~~be appropriate is unavailable to the board due to an ongoing~~
5 ~~criminal investigation.~~

6 SEC. 5. Section 3137 of the Business and Professions Code is
7 repealed.

8 ~~3137. (a) Except as otherwise provided in this section, any~~
9 ~~accusation filed against a licensee pursuant to Section 11503 of~~
10 ~~the Government Code for the violation of any provision of this~~
11 ~~chapter shall be filed within three years after the board discovers~~
12 ~~the act or omission alleged as the ground for disciplinary action,~~
13 ~~or within seven years after the act or omission alleged as the ground~~
14 ~~for disciplinary action occurs, whichever occurs first.~~

15 ~~(b) An accusation filed against a licensee pursuant to Section~~
16 ~~11503 of the Government Code alleging fraud or willful~~
17 ~~misrepresentation is not subject to the limitation in subdivision~~
18 ~~(a).~~

19 ~~(c) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging unprofessional conduct~~
21 ~~based on incompetence, gross negligence, or repeated negligent~~
22 ~~acts of the licensee is not subject to the limitation in subdivision~~
23 ~~(a) upon proof that the licensee intentionally concealed from~~
24 ~~discovery his or her incompetence, gross negligence, or repeated~~
25 ~~negligent acts.~~

26 ~~(d) If an alleged act or omission involves any conduct described~~
27 ~~in Section 726 committed on a minor, the 10-year limitations period~~
28 ~~in subdivision (c) shall be tolled until the minor reaches the age~~
29 ~~of majority.~~

30 ~~(e) An accusation filed against a licensee pursuant to Section~~
31 ~~11503 of the Government Code alleging conduct described in~~
32 ~~Section 726 shall be filed within three years after the board~~
33 ~~discovers the act or omission alleged as the ground for disciplinary~~
34 ~~action, or within 10 years after the act or omission alleged as the~~
35 ~~ground for disciplinary action occurs, whichever occurs first. This~~
36 ~~subdivision shall apply to a complaint alleging conduct received~~
37 ~~by the board on and after January 1, 2006.~~

38 ~~(f) In any allegation, accusation, or proceeding described in this~~
39 ~~section, the limitations period in subdivision (a) shall be tolled for~~
40 ~~the period during which material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

4 SEC. 6. Section 3750.51 of the Business and Professions Code
5 is repealed.

6 3750.51.—(a) Except as provided in subdivisions (b), (c), and
7 (c), any accusation filed against a licensee pursuant to Section
8 11503 of the Government Code shall be filed within three years
9 from the date the board discovers the alleged act or omission that
10 is the basis for disciplinary action, or within seven years from the
11 date the alleged act or omission that is the basis for disciplinary
12 action occurred, whichever occurs first.

13 (b) An accusation filed against a licensee pursuant to Section
14 11503 of the Government Code alleging the procurement of a
15 license by fraud or misrepresentation is not subject to the
16 limitations set forth in subdivision (a).

17 (c) The limitation provided for by subdivision (a) shall be tolled
18 for the length of time required to obtain compliance when a report
19 required to be filed by the licensee or registrant with the board
20 pursuant to Article 11 (commencing with Section 800) of Chapter
21 1 is not filed in a timely fashion.

22 (d) If an alleged act or omission involves a minor, the seven-year
23 limitations period provided for by subdivision (a) and the 10-year
24 limitations period provided for by subdivision (c) shall be tolled
25 until the minor reaches the age of majority.

26 (e) An accusation filed against a licensee pursuant to Section
27 11503 of the Government Code alleging sexual misconduct shall
28 be filed within three years after the board discovers the act or
29 omission alleged as the ground for disciplinary action, or within
30 10 years after the act or omission alleged as the ground for
31 disciplinary action occurs, whichever occurs first.

32 (f) The limitations period provided by subdivision (a) shall be
33 tolled during any period if material evidence necessary for
34 prosecuting or determining whether a disciplinary action would
35 be appropriate is unavailable to the board due to an ongoing
36 criminal investigation.

37 SEC. 7. Section 4982.05 of the Business and Professions Code
38 is repealed.

39 4982.05.—(a) Except as provided in subdivisions (b), (c), and
40 (e), any accusation filed against a licensee pursuant to Section

1 ~~11503 of the Government Code shall be filed within three years~~
2 ~~from the date the board discovers the alleged act or omission that~~
3 ~~is the basis for disciplinary action, or within seven years from the~~
4 ~~date the alleged act or omission that is the basis for disciplinary~~
5 ~~action occurred, whichever occurs first.~~

6 ~~(b) An accusation filed against a licensee pursuant to Section~~
7 ~~11503 of the Government Code alleging the procurement of a~~
8 ~~license by fraud or misrepresentation is not subject to the~~
9 ~~limitations set forth in subdivision (a).~~

10 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~
11 ~~for the length of time required to obtain compliance when a report~~
12 ~~required to be filed by the licensee or registrant with the board~~
13 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~
14 ~~1 is not filed in a timely fashion.~~

15 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
16 ~~limitations period provided for by subdivision (a) and the 10-year~~
17 ~~limitations period provided for by subdivision (c) shall be tolled~~
18 ~~until the minor reaches the age of majority.~~

19 ~~(e) An accusation filed against a licensee pursuant to Section~~
20 ~~11503 of the Government Code alleging sexual misconduct shall~~
21 ~~be filed within three years after the board discovers the act or~~
22 ~~omission alleged as the grounds for disciplinary action, or within~~
23 ~~10 years after the act or omission alleged as the grounds for~~
24 ~~disciplinary action occurs, whichever occurs first. This subdivision~~
25 ~~shall apply to a complaint alleging sexual misconduct received by~~
26 ~~the board on and after January 1, 2002.~~

27 ~~(f) The limitations period provided by subdivision (a) shall be~~
28 ~~tolled during any period if material evidence necessary for~~
29 ~~prosecuting or determining whether a disciplinary action would~~
30 ~~be appropriate is unavailable to the board due to an ongoing~~
31 ~~criminal investigation.~~

32 ~~(g) For purposes of this section, “discovers” means the later of~~
33 ~~the occurrence of any of the following with respect to each act or~~
34 ~~omission alleged as the basis for disciplinary action:~~

35 ~~(1) The date the board received a complaint or report describing~~
36 ~~the act or omission.~~

37 ~~(2) The date, subsequent to the original complaint or report, on~~
38 ~~which the board became aware of any additional acts or omissions~~
39 ~~alleged as the basis for disciplinary action against the same~~
40 ~~individual.~~

1 ~~(3) The date the board receives from the complainant a written~~
2 ~~release of information pertaining to the complainant's diagnosis~~
3 ~~and treatment.~~

4 SEC. 8. Section 4990.32 of the Business and Professions Code
5 is repealed.

6 ~~4990.32.—(a) Except as otherwise provided in this section, an~~
7 ~~accusation filed pursuant to Section 11503 of the Government~~
8 ~~Code against a licensee or registrant under the chapters the board~~
9 ~~administers and enforces shall be filed within three years from the~~
10 ~~date the board discovers the alleged act or omission that is the~~
11 ~~basis for disciplinary action or within seven years from the date~~
12 ~~the alleged act or omission that is the basis for disciplinary action~~
13 ~~occurred, whichever occurs first.~~

14 ~~(b) An accusation filed against a licensee alleging the~~
15 ~~procurement of a license by fraud or misrepresentation is not~~
16 ~~subject to the limitations set forth in subdivision (a).~~

17 ~~(c) The limitations period provided by subdivision (a) shall be~~
18 ~~tolled for the length of time required to obtain compliance when~~
19 ~~a report required to be filed by the licensee or registrant with the~~
20 ~~board pursuant to Article 11 (commencing with Section 800) of~~
21 ~~Chapter 1 is not filed in a timely fashion.~~

22 ~~(d) An accusation alleging sexual misconduct shall be filed~~
23 ~~within three years after the board discovers the act or omission~~
24 ~~alleged as the grounds for disciplinary action or within 10 years~~
25 ~~after the act or omission alleged as the grounds for disciplinary~~
26 ~~action occurred, whichever occurs first. This subdivision shall~~
27 ~~apply to a complaint alleging sexual misconduct received by the~~
28 ~~board on and after January 1, 2002.~~

29 ~~(e) If an alleged act or omission involves a minor, the seven-year~~
30 ~~limitations period provided for by subdivision (a) and the 10-year~~
31 ~~limitations period provided for by subdivision (d) shall be tolled~~
32 ~~until the minor reaches the age of majority. However, if the board~~
33 ~~discovers an alleged act of sexual contact with a minor under~~
34 ~~Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after~~
35 ~~the limitations periods described in this subdivision have otherwise~~
36 ~~expired, and there is independent evidence that corroborates the~~
37 ~~allegation, an accusation shall be filed within three years from the~~
38 ~~date the board discovers that alleged act.~~

39 ~~(f) The limitations period provided by subdivision (a) shall be~~
40 ~~tolled during any period if material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

4 (g) For purposes of this section, “discovers” means the latest
5 of the occurrence of any of the following with respect to each act
6 or omission alleged as the basis for disciplinary action:

7 (1) The date the board received a complaint or report describing
8 the act or omission.

9 (2) The date, subsequent to the original complaint or report, on
10 which the board became aware of any additional acts or omissions
11 alleged as the basis for disciplinary action against the same
12 individual.

13 (3) The date the board receives from the complainant a written
14 release of information pertaining to the complainant’s diagnosis
15 and treatment.

16 SEC. 9. Section 5561 of the Business and Professions Code is
17 repealed.

18 5561. All accusations against licensees charging the holder of
19 a license issued under this chapter with the commission of any act
20 constituting a cause for disciplinary action shall be filed with the
21 board within five years after the board discovers, or through the
22 use of reasonable diligence should have discovered, the act or
23 omission alleged as the ground for disciplinary action, whichever
24 occurs first, but not more than 10 years after the act or omission
25 alleged as the ground for disciplinary action. However, with respect
26 to an accusation alleging a violation of Section 5579, the accusation
27 may be filed within three years after the discovery by the board
28 of the alleged facts constituting the fraud or misrepresentation
29 prohibited by Section 5579.

30 SEC. 10. Section 5661 of the Business and Professions Code
31 is repealed.

32 5661. All accusations against a licensee shall be filed within
33 three years after the board discovers, or through the use of
34 reasonable diligence should have discovered, the act or omission
35 alleged as the ground for disciplinary action or within six years
36 after the act or omission alleged as the ground for disciplinary
37 action, whichever occurs first. However, with respect to an
38 accusation alleging a violation of Section 5667, the accusation
39 may be filed within three years after the discovery by the board

1 of the alleged facts constituting the fraud or misrepresentation
2 prohibited by Section 5667.

3 If any accusation is not filed within the time provided in this
4 section, no action against a licensee shall be commenced under
5 this article.

6 SEC. 11. Section 7686.5 of the Business and Professions Code
7 is repealed.

8 ~~7686.5. All accusations against licensees shall be filed with~~
9 ~~the bureau within two years after the performance of the act or~~
10 ~~omission alleged as the ground for disciplinary action; provided,~~
11 ~~however, that the foregoing provision shall not constitute a defense~~
12 ~~to an accusation alleging fraud or misrepresentation as a ground~~
13 ~~for disciplinary action. The cause for disciplinary action in such~~
14 ~~case shall not be deemed to have accrued until discovery, by the~~
15 ~~bureau, of the facts constituting the fraud or misrepresentation,~~
16 ~~and, in such case, the accusation shall be filed within three years~~
17 ~~after such discovery.~~

18 SEC. 12. Section 9884.20 of the Business and Professions
19 Code is repealed.

20 ~~9884.20. All accusations against automotive repair dealers~~
21 ~~shall be filed within three years after the performance of the act~~
22 ~~or omission alleged as the ground for disciplinary action, except~~
23 ~~that with respect to an accusation alleging fraud or~~
24 ~~misrepresentation as a ground for disciplinary action, the accusation~~
25 ~~may be filed within two years after the discovery, by the bureau,~~
26 ~~of the alleged facts constituting the fraud or misrepresentation.~~

27 SEC. 13. Section 9889.8 of the Business and Professions Code
28 is repealed.

29 ~~9889.8. All accusations against licensees shall be filed within~~
30 ~~three years after the act or omission alleged as the ground for~~
31 ~~disciplinary action, except that with respect to an accusation~~
32 ~~alleging a violation of subdivision (d) of Section 9889.3, the~~
33 ~~accusation may be filed within two years after the discovery by~~
34 ~~the bureau of the alleged facts constituting the fraud or~~
35 ~~misrepresentation prohibited by that section.~~